

N.D.A.G. Letter to Kinsey (Nov. 5, 1985)

November 5, 1985

Mr. Robert W. Kinsey
Divide County State's Attorney
110 North Main Street
Crosby, ND 58730

Dear Bob:

Thank you for your letter of September 24, 1985, regarding the mill levy limitation for a county library board.

Your letter stated that in 1946 the voters of Divide County authorized a mill levy for a county library board. Since that voter authorization, the legislature has increased the mill levy limitation for a county library board from two to four mills. You wish to know whether the county may now levy a maximum of four mills without additional voter approval.

In North Dakota, counties and their public officers may act only within the scope of authority granted to them by the State's Constitution and its legislature. County of Stutsman v. State Historical Society, 371 N.W.2d 137 (N.D. 1985); Kopplin v. Burleigh County, 47 N.W.2d 137 (N.D. 1951). This limitation also applies when a state's citizens vote the amount of the taxes to be levied. 84 CJS Taxation § 351, p. 684 (1954).

Therefore, if there is a desire to take advantage of the legislatively authorized four mill limitation found in N.D.C.C. §57-15-06.7(15), the question must again be submitted to the electors pursuant to N.D.C.C. §40-38-01.

Additionally, your letter stated that the Divide County Library is in possession of approximately \$20,000 which it received in the form of an unrestricted gift. You wish to know whether this \$20,000 must be taken into account in calculating the mill levy for the library board or it may be set aside as a reserve.

N.D.C.C. § 40-38-02(1) provides as follows:

40-38-02. LIBRARY FUND - LEVY - KEPT SEPARATE -
EXEMPTION FOR CITY LEVYING TAX - INCREASING LEVY.

1. For purposes of establishing and maintaining public library service, the governing body of a municipality or county authorizing the same shall establish a library fund. The library fund shall consist of annually levying and causing to be collected as other taxes are collected, a municipal or county tax not exceeding the limitations in subsection 15 of section

57-15-10 and other moneys received for library purposes from federal, state, county, municipal, or private sources.
(Emphasis supplied.)

Thus, the statute clearly contemplates that an unrestricted gift must be placed into the general library fund. Therefore, this gift would be taken into account in calculating the mill levy for the library board.

Sincerely,

Nicholas J. Spaeth

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